THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13363 of 2002

Dated:30.08.2007

Between:

T.Kishan Singh, S/o.Kundan Singh.

…Petitioner

and

The Commissioner (Appeals),
O/o.Chief Commissioner of Land Administration,
Nampally Station Road, Hyderabad,
and others.

…Respondents

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ORDER:

The petitioner herein succeeded to the agricultural land in Survey Nos.153 and 154 situated at Kandikal Village admeasuring 45,520 square metres along with Survey Nos.20, 57, 58, 59, 60, 61, 62, 65, 66 and 67 of Kanchan Bagh Village and Survey Nos.103, 105, 106, 108 and 109 of Kandikal Village. His father was the original owner. He filed a declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), who claimed that the land is agricultural land, and therefore, the same is not urban vacant land for the purpose of the Act. After following the procedure, the second respondent passed final orders under Section 8(4) of the Act and also issued notice and notification under Sections 10(1) and 10(3) of the Act, and when a notice under Section 10(5) of the Act dated 10.07.1998 was issued by the second respondent, the petitioner preferred an appeal, being ULC Appeal No.Hyd.128/98, before the first respondent. *Inter alia*, he contended that as the land is agricultural land as on the date of coming into force of the Act, and the area was included in the master plan in 1980, the same cannot be treated as vacant land for the purpose of the Act. Therefore, he challenged the

order of the second respondent insofar as the same treated 19783.60 square metres in Survey No.154 as surplus land. By an order dated 29.12.2000, the first respondent rejected the contention concluding that the land used in Survey No.153 is other than agricultural (residential), and that major portion of the land in Survey No.154 is recreational and minor part is residential.

When the Writ Petition was filed, the decision of the Supreme Court in **Atia Mohammadi Begum v. State of U.P.**[1] was applied to similar cases. It was held therein that when the land held was not vacant land on the date of commencement of the Act, the authorities cannot convert the land into vacant land by their unilateral act by including it in the master plan. The same ground is also pressed before this Court. Learned Assistant Government Pleader (ULC) opposing the Writ Petition submits that **Atia Mohammadi Begum** (supra) has been overruled by the subsequent judgment in **State of A.P. v. Audikesava Reddy**[2]. In the said judgment, it was held that the master plan prepared as per the law in force even subsequent to enforcement of the Act has to be taken into consideration to determine whether a particular piece of land is vacant land or not. In view of the legal position, this Court does not find any infirmity or illegality in the order passed by the appellate authority.

The Writ Petition is, therefore, dismissed. No costs.

(V.V.S.RAO, J)

30.08.2007
vs

[1] (1993) 2 SCC 546

[2] (2002) 1 SCC 227